BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 29.11.2022

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THE HONOURABLE MR. JUSTICE MOHAMMED SHAFFIQ

W.P.(MD).No.4412 of 2022
and
W.M.P.(MD).No.3723 of 2022

M/s.Rasathee Garments,
Represented by its Proprietor,
443, Bazaar,
Virudhunagar. ... Petitioner

Vs.

The State Tax Officer,
Virudhunagar-1 Assessment Circle,
Virudhunagar. ...Respondent

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, calling for the records of the respondent in his proceedings in CST No.501300/2013-14, quash the Notice dated 15.02.2022 issued therein.

For Petitioner	:	M/s.R.L.Ramani, Senior Counsel for Mr.S.Raja Jeya Chandra Paul
For Respondent	:	Mr.M.Siddharthan, Additional Government Pleader.

ORDER

This Writ Petition is filed challenging the impugned notice dated 15.02.2022 issued by the respondent for the assessment year 2013-14 on the limited ground that the same is barred by limitation.

2. It is submitted by the learned counsel for the petitioner that the petitioner is engaged in the manufacture of garments and trading in edible oil and spices and is a registered dealer on the file of the Respondent under the provisions of TNVAT Act, 2006. The petitioner filed its returns for the assessment year 2013-14 along with payment of appropriate taxes. It is submitted in terms of Section 22(2) of the TNVAT Act, 2006, for the assessment year 2013-14, the assessments are deemed to be completed on 31.10.2014. However, the impugned notice is challenged as barred by limitation inasmuch as in terms of Section 27 of the TNVAT Act, 2006, reassessment ought to be initiated within six years from the date of assessment. In the present case, the deemed assessments having been made on 31.10.2014, the period of limitation for reassessment would be six years thereof and would thus expire on 31.10.2020. The impugned notice dated 15.02.2022 having been issued after the expiry of the said period, the same is barred by limitation.

3. To the contrary, the learned counsel for the Respondents would submit that the impugned proceedings being a notice, the petitioner can file their objection. To a pointed question whether any notices were issued prior to the impugned notice within the prescribed period, it was submitted that they do not find any prior notice having been issued.

4. This Court is of the view that the impugned proceedings is ex-facie, barred by limitation thus, the same is bad for want of jurisdiction and a nullity. Though, normally this Court would exercise restraint and would refrain from interfering at the stage of Show Cause Notice, however, the same is not an inviolable Rule but rather one of discretion. The notices being ex-facie and without dispute barred by limitation, the writ petitions are entertained, inasmuch as question of limitation relates to jurisdiction. An order barred by limitation is a nullity. In this regard, it may be useful to refer to the following judgments:

i) Commissioner of Income Tax, Chennai vs. Alagendran Finance Ltd., reported in (2007) 7 SCC 215:

> *“**20.**....The revisional jurisdiction having, thus, been invoked by the Commissioner of Income Tax beyond the period of limitation, it was wholly without jurisdiction rendering the entire*

proceeding a nullity.”

ii) ITW Signode India Ltd., vs. CCE reported in (2004) 3 SCC 48:

*"**69.** The question of limitation involves a question of jurisdiction. The finding of fact on the question of jurisdiction would be a jurisdictional fact......"*

iii) State of Punjab and others vs. Bhatinda District Co-operative Milk Producers Union Ltd.,:

"24. Question of limitation being a jurisdictional question, the writ petition was maintainable."

5. For the above reasons, this Court is of the opinion that the impugned proceedings being barred by limitation which is undisputed renders the same bad for want of jurisdiction and a nullity. In view of the same, the impugned notice is set aside. This Writ Petition is disposed of. There shall be no order as to costs. Consequently, connected miscellaneous petition stands closed.

29.11.2022

Index : Yes / No
Internet : Yes/ No
Lm

To

The State Tax Officer,
Virudhunagar-1 Assessment Circle,
Virudhunagar.

MOHAMMED SHAFFIQ, J.

Lm

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